

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

**ITA No. 3066/MUM/2019
Assessment Year: 2011-12**

M/s Bhoomi Construction Projects,
Plot No. 8, Sector 11, Opp. Juinagar
Rly. Station Road,
Navi Mumbai-400709.

Vs. Income Tax Officer Ward
22(3)(1),
3rd floor, Tower No. 6, Vashi
Railway Station Complex,
Vashi,
Navi Mumbai-400 703.

**PAN No. AAHFB 9734 D
Appellant**

Respondent

Assessee by : Ms. Ritika Agarwal, AR
Revenue by : Ms. Bharti Singh, DR

Date of Hearing : 30/08/2021
Date of pronouncement : 16/11/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-26, Mumbai [in short 'CIT(A)'] for the assessment year 2011-12 dated 11.03.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. The only issue in the present appeal is with regard to disallowance of interest expenditure to the extent of Rs.14,34,600/-. The brief facts relating to the above issue are, the assessee filed its return of income declaring total income at Rs. Nil. The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and served on the assessee. The assessee is a partnership firm and engaged in the business of builder and developer.

During the assessment proceedings the AO observed that the assessee has shown a sum of Rs.3,18,27,501/- under the head 'loans and advances' in their balance sheet/includes advances given to M/s Konark Enterprises, Raja Mirani, N.G. Group and Sarjak. These advances were given to the person related concerns totalling to Rs.3,18,27,501/-. Further, he observed that the assessee also borrowed interest bearing loans and debited interest/advances cost of Rs.2,60,66,818/- to profit and loss account. During assessment proceeding, when the assessee was asked to explain why proportionate interest should not be disallowed as interest bearing funds were used by the assessee for other than business purposes.

3. After considering the submissions of the assessee, the Assessing Officer rejected the contentions of the assessee and disallowed proportionate interest claimed by the assessee to the extent of Rs.37,53,300/-.

4. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and submitted a detailed submission before him. The same is reproduced below:

"Loans to Ms Konark Enterprises, Mr Raja Mirani:-

While passing the assessment order for A. Y. 2008-09 & A. Y. 2009-10 the LD AO had disallowed the interest expenses towards interest free advances. The appellant had preferred an appeal against the order passed by the LD AO before CIT(A). The Ld. CIT (A) had confirmed the addition made by the LD AO hence the appellant had preferred an appeal before Honorable TAT Mumbai. The honorable TAT Mumbai passed the order in favour of the appellant. The copy of the said order is enclosed as Annexure 1 for your kind reference. Out of the above 8 interest free advances the advances given to M/s Konark Enterprises, Gahlot Construction & Mr Raja Mirani & Ramesh L Bhanushali were considered as advance for business Purpose hence and are duly covered by the order given by the Honorable ITAT Mumbai, hence the addition of Interest for the said parties shall be deleted.

Loans to N. G. Group ₹8,00,000

The Ld Assessing Officer had issued a remand report dated 24.03.2015 where in the LD AO vide para no 6.16 had stated that there was no actual movement of funds and ₹ 8,00,000/- debited to M/s N.G. Group was on account of Journal Entries passed towards booking made in one of the project of M/s N.G.Group. As there was no movement of funds and journal entry passed was towards booking the same shall be treated as advance for business purpose and hence the disallowance of proportionate interest shall be deleted.

Loans to N. G. Group Rs 15,22, 501 :-

During A. Y. 2011-12 the appellant had given interest free Loans & Advances of ₹ 15,22, 501/- to N.G.Group. The said amount of Rs 15,22, 501/- were given out of the interest free funds available with the appellant. The source of the interest free funds available with the appellant is tabulated annexed as Annexure 1. We have also enclosed copies of bank statements reflecting transaction as per the chart enclosed. Further the appellant also had enough of own funds as on the date of advances made to M/s N.G. Group. Copy of Balance sheet as on 30.03.2011 has already been submitted in our submission dated 03.06.2015 in page No 38. Further the appellant wish to rely on the judgment given by the Honorable High Court in case of Reliance Utilities Power Ltd where in it was held that where there are both interest bearing and non-interest bearing funds it can be presumed that interest free funds are utilized for giving interest free advances. The same view is taken by Honorable ITAT in the case of the appellant for A.Y. 2008-09 & A.Y. 2009-10. Copy of the said judgment has already been submitted in or submission for A.Y. 2010-11 on the same issue.

Loans to M/s Sarjak:-

The advances given by the appellant were made out of the interest free funds available with the appellant. A chart and other relevant details showing source of interest free funds were already submitted in our submission made for AY. 2010-11. We request your good self to kindly refer the said submissions and details with respect to the interest free advances given to M/s Sarjak.

In the light of the above submissions we request before your good self that the disallowance of interest expenses amount of Rs 37,53,300/- shall be deleted."

5. After considering the detailed submissions, the Ld. CIT(A) dismissed the appeal of the assessee by relying on the decision of Ld. CIT(A)-26, Mumbai in assessment year 2010-11.

6. Aggrieved assessee preferred an appeal before us raising following grounds of appeal :

1. *Because, Id. CIT(A) has erred in law and on facts in upholding Rs.14,34,600/- being estimated disallowance of interest u/s.36(1)(iii) on loan given to M/s. Sarjak amounting to Rs.1,19,55,000/- ignoring the fact that the advances were made from interest free funds and could not be considered for interest disallowance.*
2. *Because, Ld. CIT(A) has failed to follow the decision of hon'ble ITAT in case of the Appellant for AY 2008-09 and A Y 2009-10 on identical issue of estimated disallowance of interest u/s.36(1) (iii) on loans.*
3. *Because, Ld. CIT(A) has erred in not appreciating that even if the above expense is disallowable, the same ought to be reduced from the WIP instead of making a separate addition.*

7. At the time of hearing the Ld. AR of the assessee brought to our notice decision of the Co-ordinate Bench in the case of assessee's own case for assessment year 2009-10 and 2010-11 (ITA Nos. 3065/M/2019 & 3091/M/2019). For the sake of brevity, it is reproduced below:

"7. We have considered rival submissions and perused the material on record. As could be seen, the AO has made disallowance under section 36(1)(iii) of the Act alleging that interest free loans and advances were given to 8 parties. However, in course of appellate proceedings, learned Commissioner (Appeals) has deleted the interest disallowance made in respect of alleged interest free loans and advances to all the parties, except, Ellora Realities Pvt. Ltd. and Sarjak, considering the fact that in the remand report the AO has stated that only in respect of aforesaid two parties the assessee could not establish that these advances were for business purposes. Thus, the disallowance to the extent of Rs. 3, 33,722/- was sustained. However, from various documents placed before us including copy of ledger account, bank statements etc., we find that the interest free loans and advances given to Ellora Realities Pvt. Ltd. and Sarjak were out of interest free funds available with the assessee. No contrary evidence has been brought on record by the revenue to demonstrate that any of part of the borrowed funds was utilized for providing interest free loans and advances to the aforesaid two parties. Therefore, when interest free loans and advances were provided out of interest free funds available with the assessee, no disallowance out of interest expenditure can be made under section 36(1)(iii) of the Act. Accordingly, we delete the disallowance of Rs. 3,33,722/-. Grounds are allowed."

7.1 Respectfully following the above decision, as the issue under consideration is already considered by the Co-ordinate Bench of this Tribunal and decided in favour of the assessee. We are inclined to allow the

appeal filed by the assessee. Accordingly, the grounds raised by the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 16/11/2021

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 16/11/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai